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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Pacific Cargo Services, LLC,
Debtor.

Case No. 13-30439-tmb7

Chapter 7

Stephen P. Arnot, Trustee,
Plaintiff,

Adversary Proceeding No.

COMPLAINT TO AVOID
PREFERENTIAL TRANSFER

v.

Kyle McCracken, on behalf of himself and all
others similarly situated; and Guy Oakes, on
behalf of himself and all others similarly
situated,

Defendants.

Plaintiff alleges:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334 and LR 2100.1. This is a core proceeding within the meaning of 28 USC §157(b)(F). The statutory predicate for the relief sought by this complaint is 11 USC §547(b). Venue is proper under 28 USC § 1409.

2. On January 28, 2013 (the “Petition Date”), the debtor filed herein a voluntary petition under Chapter 11 of the Bankruptcy Code. At all times prior to August 2, 2013, the debtor continued in possession of its business and properties as debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. On August 2, 2013, pursuant to this Court’s Order Converting Chapter 11 Case to Case Under Chapter 7 [ECF Doc #455], the Chapter 11 case was converted to one under Chapter 7 and, in connection therewith, plaintiff was appointed interim trustee.

Parties

3. Plaintiff is the duly qualified Chapter 7 trustee in this bankruptcy case and, as such, is the representative of the debtor's estate with the capacity to bring this adversary proceeding.

4. Defendants are individuals who are the named plaintiffs in the class action that was filed in and is pending in the Superior Court for the State of Washington for King County entitled Kyle McCracken, et al v. Pacific Cargo Services, LLC, et al, Case No. 11-2-27357-1 SEA (the “Class Action”).

Background Facts

5. On August 10, 2011, defendant Kyle McCracken commenced the Class Action on behalf of himself and a proposed class of drivers/couriers employed by the debtor and its affiliates in Washington. On January 2, 2013, defendants filed an amended complaint in the Class Action in which defendant Guy Oakes was added as co-plaintiff on behalf of himself and a proposed class of drivers/couriers employed by the debtor and its affiliates in Oregon. Defendants allege in the Class Action that the debtor and its affiliates engaged in a systematic scheme of wage and hour abuse against employees in the states of Oregon and Washington that involved, among other things, failure to pay minimum wages, failure to pay overtime wages, failure to pay for all hours worked, failure to keep accurate records of hours worked, and failure to allow rest and meal

breaks. The proposed class of Oregon employees comprises those former employees who worked as drivers or couriers in Oregon at any time from December 7, 2005, through November 26, 2012; the proposed class of Washington employees comprises those former employees who worked as drivers or couriers in Washington at any time from August 10, 2005, through November 26, 2012.

6. On or about January 3, 2013, the debtor, its affiliates, James Holman and defendants entered into that certain CR 2A Settlement Agreement (the “Settlement Agreement”). Under the Settlement Agreement, among other things, the debtor and its affiliates assigned to defendants their Malpractice Claims (the “Assignment”). The “Malpractice Claims” are defined in the Settlement Agreement to mean “any and all claims for malpractice that Defendants [in the Class Action] have or will have against Nancy Cooper, any other person at Garvey Schubert Barer, and the law firm of Garvey Schubert Barer over any advice or other professional services provided to Defendants [in the Class Action] before the commencement of [the Class Action] regarding Defendants’ Wage and Hour Practices [as defined in the Settlement Agreement], including but not limited to Defendants’ Flat Rate Pay Practice [as defined in the Settlement Agreement].”

7. On or about January 25, 2013, the debtor's affiliates merged with and into the debtor. The entities that merged with the debtor were Pacific Cargo Services-Washington, LLC, an Oregon limited liability company; Pacific Courier Services, LLC, an Oregon limited liability company; Pacific Courier Services-Washington, LLC, an Oregon limited liability company; Integrity Transportation Group, LLC, an Oregon limited liability company; and ITG Washington, LLC, a Washington limited liability company.

Claim for Relief

8. The Assignment was a transfer of an interest of the debtor in property (a) to or for the benefit of a creditor, (b) for or on account of an antecedent debt owed by the

1 debtor before such transfer was made, (c) made while the debtor was insolvent, (d) made
2 within 90 days of the Petition Date, and (e) that, if validated, will enable defendants to
3 receive more than they would receive if the Assignment had not been made and if
4 defendants were to receive distributions in this Chapter 7 case on account of their claims
5 as and to the extent provided by the provisions of the Bankruptcy Code.

6 WHEREFORE, plaintiff prays for judgment (a) voiding the Assignment, (b)
7 ordering defendants, and each of them, to pay plaintiff all costs allowable by law, and (c)
8 granting such other and further relief as may be appropriate.

9 Dated: August 27, 2013.

10 Greene & Markley, P.C.

11 By: /s/ David A. Foraker
12 David A. Foraker, OSB #812280
13 Attorneys for Trustee
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